share of this grandchild in the income going over to other beneficiaries on her death; all that happened was that she ceased to be a member of the class of beneficiaries and therefore the income fell to be divided among a reduced class of beneficiaries at the next and subsequent annual divisions.

I should perhaps mention that the affidavit of the trustees shows that the mother of this grandchild was married to a son of Syed Abdullah and therefore she was the grandchild of both Syed Shaikh and Syed Abdullah, but as the summons raises no question for my decision on this aspect of the facts I make no further reference to it in this judgment.

It was suggested in the course of argument that the judgment of Mr. Justice Taylor in Originating Summons 249 of 1953 might affect the answers to the questions raised in this summons. I have examined the judgment in that case and the formal order drawn up subsequently and it seems to me that the formal order went somewhat further than the judgment upon which it is based. But whether that be so or not, it is quite clear that any observations relating to questions other than the distribution of income among the issue of a deceased child of Syed Shaikh or Syed Abdullah *inter se* are *obiter*, and consequently do not govern the decision in the present proceedings.

For these reasons, therefore, I hold that after the death of Syed Ahmed in 1910, and likewise after the death of the grandchild of Syed Shaikh in 1943, the income fell to be divided at the next and subsequent annual divisions among such of the children or remoter issue of Syed Shaikh and Syed Abdullah as were living at the time of such divisions, subject to the limitation that the issue of a deceased child of Syed Shaikh or Syed Abdullah should take only the share which their parent or parents would have taken, if living.

I order the costs of the parties, as between solicitor and client, in these proceedings to be paid out of the estate.

Order accordingly.

Solicitors: *Allen & Gledhill; Braddell Bros.; Mallal & Namazie.*

LIM PONG JOO v. REG.

[A. Cr. J. (Rigby J.) February 8, 1957]

[Penang — Criminal Appeal No. 41 of 1956]

Common Gaming Houses Ordinance, 1953, ss. 2 & 4(1)(b) — "Gaming" — What evidence necessary.

To establish an offence under section 4(1)(b) of the Common Gaming Houses Ordinance, 1953, there must be evidence that the playing of the game involved an opportunity to the successful player to recover money or money's worth within the definition of "gaming" under section 2 of the Ordinance.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Cheng Poh for the appellant.

F. G. Cooke (Federal Counsel) for the respondent.

Rigby J.: — The appellant in this case was convicted of an offence that he being the occupier of certain premises, did permit those premises to be used by another person as a common gaming house and that he had committed an offence under section 4(1)(b) and punishable under section 4(1) of the Common Gaming Houses Ordinance, 1953. Upon conviction he was fined $500 or two months' imprisonment.

The premises in question appear to have been a coffee shop. The very brief facts of the case were that a Police Inspector entered the shop and found a male Chinese operating a pin-table therein. The man was placing 20 cent coins into the slot of the machine. The Police Inspector watched him playing for some ten minutes and then took proceedings under the Common Gaming Houses Ordinance. The male Chinese who had been found playing on the pin-table gave evidence for the prosecution. He admitted that he was playing by putting 20 cent pieces into the machine. He stated, however, that he got no prize for the game if he succeeded in winning. A Police Officer, who was apparently fully conversant with the operation of these machines, gave evidence for the prosecution as to the manner in which the machines were operated and the game was played. No doubt through inadvertence on the part of the prosecution he did not, however, give any evidence as to what was the position if the player operating the pin-table was successful; that is to say, what prize, if any, the successful player obtained.

The learned Deputy Public Prosecutor does not seek to support the conviction on the sole ground that there was no adequate evidence before the learned Magistrate that the playing of the game involved an opportunity to the successful player to recover either money or money's worth within the definition of "gaming" under section 2 of the Common Gaming Houses Ordinance.

The appeal is accordingly allowed and the conviction set aside. I direct that the fine of $500 be refunded to the appellant.

Appeal allowed.

Solicitors: *Pillai, Lim, Lee & Hwang.*